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May 23, 2006

Mr. Michael E. Toner
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments on AOR 2006-19

Dear Mr. Toner:

On behalf of the Association of State Democratic Chairs ("ASDC"), I am writing to comment on the Office of General Counsel's ("OGC") proposed response to the request of the Los Angeles County Democratic Party Central Committee ("LACDP") for an advisory opinion. Specifically, the LACDP has asked how the Federal Election Commission's regulations apply to the prerecorded telephone calls and direct mail pieces that the LACDP intends to distribute between May 22nd and June 2nd preceding the June 6th primary. These communications, which are more fully described below, are similar to communications that local Democratic and Republican party committees engage in across the country. For this reason, the ASDC, which represents the interests of state and local Democratic Party committees, is keenly interested in how the Commission responds to the LACDP's request.

The ASDC believes that the Commission cannot properly respond to this request unless it takes into account the purpose and content of the proposed communications. Neither the mailings nor the phone calls will make any reference to any federal candidate. The clear purpose of these communications, which is evident from their text and timing, is to make likely Democratic primary voters aware of the local candidates that the committee has endorsed and to urge voters to support them. Like many communications made by political committees and candidates, these communications only refer to the date of the election to underscore the relevance and timeliness of the message. Referencing the date of the election is a cue designed to

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encourage the intended audience to pay attention to the message. The message being conveyed is that the election is quickly approaching and the information that is being provided is important to how the voter decides to vote.

The proposed communications do not provide the type of information that would typically be provided if the LACDP was intending to assist a voter in the act of voting. The communications do not provide information regarding polling hours, the location of a voter's polling place or the availability of assistance in getting to the polls. Further, the communications are made far enough in advance of the election to make the reference to the date of the election ineffective in prompting someone to actually go vote. The message is clearly intended to convey the committee's endorsement of specific candidates and not to spur the voter to go to the polls. Additionally, these communications contain a blanket message to voters rather than an individualized message to supporters.

An appreciation of these facts is critical to formulating a proper response to the LACDP. The LACDP, like most local party committees, is probably reluctant to assume the additional reporting, recordkeeping and fundraising restrictions that are triggered when a local party committee engages in "federal election activity." Frankly, most local party committees cannot absorb the costs and risks associated with engaging in "federal election activity." Local party committees regularly forgo engaging in any federal election activity in order to avoid having to assume all the additional responsibilities and legal liability that accompany such activity. Local party committees for the most part are staffed by volunteers, operate on modest budgets and concentrate their attention on local politics. When they engage in activity in connection with a federal election, they limit themselves to those activities that do not trigger federal reporting responsibilities.

The problem with the OGC draft is that it broadly reads the definition of "get-out-the-vote" in the regulations to include any communication that includes the date of the election. It fails to recognize that referencing the date of the election is not always a means of assisting a voter in voting. Merely referring to the date of an election is seldom an effective means of getting people to the polls. When that reference is in a communication days before the election, it simply does not serve the purpose that the OGC draft ascribes to it. It would not be intended to "get-out-the-vote" as that term is used in the statute and in the regulations. Consequently, it should not be considered federal election activity with all the attendant consequences.

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Should the Commission adopt the OGC draft, it would be abandoning the careful and well considered position it took in adopting the regulation. Congress did not provide in the statute a definition of "get-out-the-vote." The Commission understood that left undefined the term could encompass any political activity in which a local party engages. All local party activity at some level of abstraction can be seen as intended to motivate citizens to vote. The Commission recognized that Congress had something more concrete in mind, specifically those activities that in common political parlance are targeted at assisting identified supporters in voting. Election Day transportation to the polls is a prime example of this type of activity.

By including "voter identification" along with "get-out-the-vote" in the definition of federal election activity, Congress provided the context in which these terms are to be understood. It is reasonable to assume that Congress intended that these terms be given the same meaning as individual members of Congress would use these terms in discussing their own campaigns. It is safe to conclude that few, if any, members of Congress would consider the mere mention of the date of the election in a communication to be "get-out-the-vote" activity. Rather they would understand in their own campaigns when someone refers to get-out-the-vote, the person would be referring to how they actually spur identified supporters to go vote. This usage of the terms would explain why Congress coupled voter identification and get-out-the-vote in the statute.

The communications that LACDP intends to engage in are not of this type. In the language of everyday politics these direct mail pieces and recorded phone calls are simply not "get-out-the-vote." The Commission should cleave to the views that it expressed in adopting these regulations and limit the reach of get-out-the-vote to activity that truly assists voters in the act of voting. An expanded definition will not only have a substantial impact on the operation of local party committees but will have unexplored consequences for groups of state and local candidates that engage in similar activity.

Very truly yours,



Karl J. Sandstrom

KJS: